

**SUPREME COURT MINUTES
WEDNESDAY, OCTOBER 30, 2002
SAN FRANCISCO, CALIFORNIA**

S016081

PEOPLE v. MCDERMOTT (MAUREEN)

Rehearing denied

Opinion modified – no change in judgment

S082112D029586 Fourth Appellate District,
Division One

PEOPLE v. HURTADO

Rehearing denied

Opinion modified – no change in judgment

S109520A095878 First Appellate District,
Division Four

T. (ELDRIDGE), IN RE

Petition for review granted (criminal case)

Votes: George, CJ., Kennard, Baxter,
Werdegar, Chin, Brown and Moreno, JJ.**S109711**B139975 Second Appellate District,
Division Seven

CASSIM v. ALLSTATE INSURANCE COMPANY

Petition for review granted (civil case)

Chin, J., was absent and did not participate.

Votes: George, CJ., Kennard, Baxter,
Werdegar, Brown and Moreno, JJ.**S109735**B149088 Second Appellate District,
Division Seven

JULIAN et al. v. HARTFORD UNDERWRITERS

Petition for review granted; issues limited (civil case)

The issue to be briefed and argued shall be limited to whether the weather provision in an all-risk policy, which states that loss caused by weather conditions is excluded only if weather conditions contribute to another excluded peril, violates Insurance Code section 530 and the principle of the efficient proximate cause of loss.

Votes: George, CJ., Kennard, Baxter,
Werdegar, Chin, Brown and Moreno, JJ.

S110677

H024740 Sixth Appellate District

GUISTO v. HERNS

Review granted on court's own motion; transferred to CA 6

At the request of the court of appeal the cause is transferred to the Court of Appeal, Sixth Appellate District, with directions to vacate its September 6, 2002, order and reconsider the matter as it sees fit.

Votes: George, CJ., Kennard, Baxter, Werdegarr, Chin, Brown and Moreno, JJ.

S096570B141519 Second Appellate District,
Division Three

SOUDERS v. PHILIP MORRIS INC., etc. et al.

Transferred to CA 2/3 after hold

with directions to vacate its decision and to reconsider the cause in light of *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828 and *Naegle v. R. J. Reynolds Tobacco Co.* (2002) 28 Cal.4th. 856.

Votes: George, CJ., Kennard, Baxter, Werdegarr, Chin, Brown, Moreno, JJ.

S097429A085595 First Appellate District,
Division Three

PEOPLE v. HILL (BRIAN T.)

Dismissed as improvidently granted (rule 29.4 (c))

Pursuant to rule 29.4(c), California Rules of Court, the above-entitled review is DISMISSED and cause is remanded to the Court of Appeal, First Appellate District, Division Three.

Votes: George, CJ., Kennard, Baxter, Werdegarr, Chin, Brown and Moreno, JJ.

S097441B145673 Second Appellate District,
Division Five

BOWYER v. PHILIP MORRIS INC.

Transferred to CA 2/5 after hold

with directions to vacate its decision and to reconsider the cause in light of *Myers v. Philip Morris Companies, Inc.* (2002) 28

Cal.4th 828 and *Naegele v. R.J. Reynolds Tobacco Co.* (2002) 28 Cal.4th 856.

Votes: George, CJ., Kennard, Baxter, Werdegar, Chin, Brown and Moreno, JJ.

S099989

B141850 Second Appellate District,
Division Six

REYNOLDS et al. v. PHILIP MORRIS INC. et al.
Transferred to CA 2/6 after hold

with directions to vacate its decision and to reconsider the cause in light of *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828 and *Naegele v. R. J. Reynolds Tobacco Co.* (2002) 28 Cal. 4th 856.

Votes: George, CJ., Kennard, Baxter, Werdegar, Chin, Brown, Moreno, JJ.

S102941

A086991 First Appellate District,
Division Four

HENLEY (PATRICIA) v. PHILIP MORRIS, INC.
Transferred to CA 1/4 after hold

with directions to vacate its decision and to reconsider the cause in light of *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828 and *Naegele v. R.J. Reynolds Tobacco Co.* (2002) 28 Cal. 4th 856. Appellant's motion to "transfer this case from 'Grant and Hold' Review to Active Review" filed August 28, 2002, is denied. Respondent's "Motion to Dismiss Review" filed September 6, 2002, is denied.

Votes: George, C. J., Kennard, Baxter, Werdegar, Chin, Brown, Moreno, JJ.

S076654

ROSS (CRAIG ANTHONY) ON H.C.
Petition for writ of habeas corpus denied (AA)

The petition for writ of habeas corpus is denied on the merits. All of the claims are also procedurally barred on the separate ground that they are untimely. (See *In re Robbins* (1998) 18 Cal.4th 770, 780-781.) In addition, as explained below, other procedural

bars apply to certain of petitioner's claims or to specified contentions included within those claims.

Claim 5: Petitioner's contentions that the trial court committed instructional error are barred because they were raised and rejected on appeal. (*In re Waltreus* (1965) 62 Cal.2d 218, 225.) Petitioner's contention that his death sentence violates *Enmund v. Florida*, *supra*, 458 U.S. 782, and *Tison v. Arizona*, *supra*, 481 U.S. 137, is barred because it was not, but could have been, raised on appeal. (*In re Dixon* (1953) 41 Cal.2d 756, 759.)

Claim 6: Petitioner's contention that the allegedly erroneous instructions violated his Sixth Amendment right to a determination of all factual issues by the jury is barred because it could have been, but was not, raised on direct appeal. (*In re Dixon*, *supra*, 41 Cal.2d 756, 759.) The rest of this claim is barred because it was raised and rejected on appeal. (*In re Waltreus*, *supra*, 62 Cal.2d at p. 225.)

Claim 7 is barred because it was raised and rejected on appeal. (*In re Waltreus*, *supra*, 62 Cal.2d at p. 225.)

Claim 10: We accept petitioner's withdrawal of this claim.

Claim 11: Petitioner's contention that the trial court's failure to grant a mistrial violated the federal Constitution is barred because it could have been, but was not, raised on appeal. (*In re Dixon*, *supra*, 41 Cal.2d 756, 759.)

Claim 13: Petitioner's contention that the trial court's unbalanced questioning on juror attitudes toward the death penalty selected out African-Americans is barred because it could have been, but was not, raised on appeal. The rest of this claim is barred because it was raised and rejected on appeal. (*In re Waltreus*, *supra*, 62 Cal.2d at p. 225.)

Claim 16 is barred on the ground that it was raised and rejected on appeal. (*In re Waltreus*, *supra*, 62 Cal.2d at p. 225.)

Claim 17: Except for petitioner's allegations that his trial counsel was ineffective, this claim is barred because it was raised and rejected on appeal. (*In re*

Waltreus, supra, 62 Cal.2d at p. 225.)

Claim 18: Insofar as they are based on the federal Constitution, petitioner's contentions that the rape in concert instructions were improper (1) because the crime of rape in concert applies only to cases of gang rape and there was no evidence that Taylor was gang raped, and (2) because the trial court did not give a unanimity instruction, are barred because they could have been, but were not, raised on appeal. (*In re Dixon* (1953) 41 Cal.2d 756, 759.) The rest of this claim is barred because it was raised and rejected on appeal. (*In re Waltreus* (1965) 62 Cal.2d 218, 225.)

Claim 20 is barred because it was raised and rejected on appeal. (*In re Waltreus, supra*, 62 Cal.2d at p. 225.)

Claim 21: We accept petitioner's withdrawal of his Fifth and Sixth Amendment contentions. The rest of the claim is barred because it was raised and rejected on appeal. (*In re Waltreus, supra*, 62 Cal.2d at p. 225.)

Claim 22: We accept petitioner's withdrawal of his First and Sixth Amendment contentions. The remainder of the claim is barred because it was raised and rejected on appeal. (*In re Waltreus, supra*, 62 Cal.2d at p. 225.)

Claim 23: We accept petitioner's withdrawal of his First and Sixth Amendment contentions. The remainder of the claim is barred because it was raised and rejected on appeal. (*In re Waltreus, supra*, 62 Cal.2d at p. 225.)

Claim 24: Petitioner's contentions that the appellate record was inadequate, that the trial court committed instructional error, and that the prosecutor committed misconduct in closing argument are barred because they were raised and (at least implicitly) rejected on appeal. (*In re Waltreus, supra*, 62 Cal.2d at p. 225.)

Claim 25 is barred because it was raised and rejected on appeal. (*In re Waltreus, supra*, 62 Cal.2d at p. 225.)

Claim 26: The contentions in this claim that are based on the Eighth and Fourteenth

Amendments are barred because they were raised and rejected on appeal. (*In re Waltreus, supra*, 62 Cal.2d at p. 225.) The contentions based on the Sixth Amendment are barred because they could have been, but were not, raised on appeal. (*In re Dixon, supra*, 41 Cal.2d 756, 759.)

Claim 27: Petitioner's contention that the alleged misconduct violated the Eighth and Fourteenth Amendments is barred because it was raised and rejected on appeal. (*In re Waltreus, supra*, 62 Cal.2d at p. 225.) His contention that the alleged misconduct violated the Fifth and Sixth Amendments is barred because it could have been, but was not, raised on appeal. (*In re Dixon, supra*, 41 Cal.2d 756, 759.)

Claim 32: Petitioner's contention that his consecutive sentence for the non-capital crimes violates the Eighth and Fourteenth Amendments is barred because it was raised and rejected on appeal. (*In re Waltreus, supra*, 62 Cal.2d at p. 225.) His contention that his sentence violates the Fifth and Sixth Amendments is barred because it could have been, but was not, raised on appeal. (*In re Dixon, supra*, 41 Cal.2d 756, 759.)

S109068

RICHARDS v. S.C. (CH2M HILL)

Petition for writ of mandate/prohibition denied

Baxter, J., was recused and did not participate.
Moreno, J., is of the opinion the petition should be granted.

S109239

E031918 Fourth Appellate District,
Division Two

ABDULLAH (LATRINA YVONNE) ON H.C.

Petition for review denied

S109253

A097738 First Appellate District,
Division Four

EDUCATION RESOURCES INSTITUTE v. LIPSKY

Petition for review denied

S109280

B156730 Second Appellate District,
Division Four

RODABAUGH ON H.C.
Petition for review denied

S109287

E030186 Fourth Appellate District,
Division Two

PEDERSEN v. JONES (S-P MURDY)
Petition for review denied

S109314

B157357 Second Appellate District,
Division Four

BURNS (CHRISTOPHER) ON H.C.
Petition for review denied

S109413

F040929 Fifth Appellate District

ESTRADA (EDWARD) ON H.C.
Petition for review denied

S109529

A095434 First Appellate District,
Division Three

PEOPLE v. ZANDRINO
Petition for review denied

Request for judicial notice denied.

S109546

D037340 Fourth Appellate District,
Division One

PEOPLE v. MCGRUFF
Petition for review denied

S109560

B147751 Second Appellate District,
Division Seven

PEOPLE v. MWASI
Petition for review denied

Kennard, J., is of the opinion the petition
should be granted.

S109577

B151179 Second Appellate District,
Division Five

LEWIS v. ENGELBRECHT
Petition for review denied

S109605

F039993 Fifth Appellate District

PABLA v. WCAB (FOSTER FARMS)
Petition for review denied

S109611

B158723 Second Appellate District,
Division Two

MELNIK v. S.C.(COUNTY OF LOS ANGELES)
Petition for review denied

S109705

A097121 First Appellate District,
Division One

JOHNSTON v. SONOMA AGRICULTURAL
PRESERVATION AND OPEN SPACE DIST.
(CITY OF SANTA ROSA et al.)
Petition for review & depublication requests denied

S109713

B153290 Second Appellate District,
Division Five

NEAL v. HEALTH NET INC. et al.
Petition for review denied

S109756

B149650 Second Appellate District,
Division One

PEOPLE v. NARANJO
Petition for review denied

S109798

B150858 Second Appellate District,
Division One

HIRSH v. GRIFFIN et al.
Petition for review denied

S109813

B159322 Second Appellate District,
Division Five

HERSHEWE v. WCAB et al.
Petition for review denied

S109877

D037142 Fourth Appellate District,
D040061 Division One

PEOPLE v. VERLINDE
Petition for review denied

S109878

B154810 Second Appellate District,
Division Eight

M. (JOHNNY), IN RE
Petition for review denied

Kennard, J., is of the opinion the petition
should be granted

S109887

C036102 Third Appellate District

PEOPLE v. STULL
Petition for review denied

S109909

A099939 First Appellate District,
Division One

GONZALEZ v. S.C. (PEOPLE)
Petition for review denied

S109922

F036807 Fifth Appellate District

PEOPLE v. TRUJILLO
Petition for review denied

S109925
C037869 Third Appellate District

PEOPLE v. POHLSCHNEIDER
Petition for review denied

S109974
H022634 Sixth Appellate District

PEOPLE v. JONES
Petition for review denied

Kennard, J., and Moreno, J., are of the opinion
the petition should be granted.

S110023
C038252 Third Appellate District

PEOPLE v. DENARD
Petition for review denied

S110029
B153545 Second Appellate District,
Division One

PEOPLE v. JAMERSON
Petition for review denied

S110036
B153273 Second Appellate District,
Division Eight

PEOPLE v. GUZMAN and MARAVILLA
Petitions for review denied

S110043
C037643 Third Appellate District

PEOPLE v. HERNANDEZ
Petition for review denied

S110046
F037859 Fifth Appellate District

PEOPLE v. KASINER
Petition for review denied

S110052
C039224 Third Appellate District

PEOPLE v. KING
Petition for review denied

S110053
F038114 Fifth Appellate District

PEOPLE v. MARTINEZ
Petition for review denied

S110054
G028081 Fourth Appellate District,
Division Three

PEOPLE v. FLORES
Petition for review denied

S110058
C038832 Third Appellate District

PEOPLE v. MCINTOSH
Petition for review denied

S110059

E030387 Fourth Appellate District,
Division Two

WEAVER et al. v. CHILD
Petition for review denied

S110061

C037491 Third Appellate District

PEOPLE v. GRIFFIN
Petition for review denied

S110065

B152606 Second Appellate District,
Division Seven

PEOPLE v. SOSA
Petition for review denied

S110076

E029725 Fourth Appellate District,
Division Two

HEMPHILL v. ZURICH-AMERICAN INS. CO.
Petition for review denied

S110078

H022994 Sixth Appellate District

PEOPLE v. CASTANEDA
Petition for review denied

S110080

G028722 Fourth Appellate District,
Division Three

PEOPLE v. TRUJILLO
Petition for review denied

S110091

B155074 Second Appellate District,
Division Seven

PEOPLE v. HEMPHILL
Petition for review denied

S110095

B161344 Second Appellate District,
Division Seven

LEE v. S.C. (BURLINGTON)
Petition for review denied

Chin, J., was recused and did not participate.

S110097

A094418 First Appellate District,
Division Two

PEOPLE v. GOTELLI
Petition for review denied

S110098

B152170 Second Appellate District,
Division Six

PEOPLE v. CALDERON
Petition for review denied

S110099

B152964 Second Appellate District,
Division Two

CHEREN v. BRENNAN
Petition for review denied

S110102

B146573 Second Appellate District,
Division Two

BEDROSIAN v. NATIONAL MEDICAL
Petition for review denied

Baxter, J., was recused and did not participate.

S110104

B151604 Second Appellate District,
Division Six

PEOPLE v. BARRERA
Petition for review denied

S110108

D040664 Fourth Appellate District,
Division One

B. (JOVAN) IN RE
Petition for review denied

S110109

E029633 Fourth Appellate District,
Division Two

PEOPLE v. BOLDS
Petition for review denied

S110110

F039328 Fifth Appellate District

PEOPLE v. ROWE
Petition for review denied

Baxter, J., was recused and did not participate.

S110113

B156805 Second Appellate District,
Division Eight

PECK/JONES CONSTRUCTION CORP. et al. v.
S.C. (HERNANDEZ)
Petition for review denied

S110118

B150567 Second Appellate District,
Division Five

PEOPLE v. POLLARD
Petition for review denied

S110119

C038421 Third Appellate District

PEOPLE v. LEWIS
Petition for review denied

S110120

B154176 Second Appellate District,
Division One

PEOPLE v. HAYES
Petition for review denied

S110121 B149920 Second Appellate District, Division Four	PEOPLE v. RUDAN Petition for review denied
S110122 A096503 First Appellate District, Division Four	PEOPLE v. BISHOP Petition for review denied
S110123 B153272 Second Appellate District, Division Six	PEOPLE v. JACKO Petition for review denied
S110133 F037683 Fifth Appellate District	PEOPLE v. ESPIRITU Petition for review denied
S110139 G028549 Fourth Appellate District, Division Three	R. (KEVIN), IN RE Petition for review denied
S110144 A097746 First Appellate District, Division One	PEOPLE v. THOMPSON Petition for review denied
S110145 C038990 Third Appellate District	PEOPLE v. MCGUIRE Petition for review denied
S110148 A094881 First Appellate District, Division Three	HOEY-CUSTOCK v. CITY OF OAKLAND Petition for review denied
S110149 D040632 Fourth Appellate District, Division One	B. (RAYSHAWN), IN RE Petition for review denied
S110153 B151316 Second Appellate District, Division Seven	PEOPLE v. BARNER Petition for review denied

S110155

A096670 First Appellate District,
Division Five

KAHN et al. v. CHETCUTI
Petition for review denied

S110163

B155028 Second Appellate District,
B148952 Division Five

A. (SOPHIA), IN RE
Petition for review denied

S110164

E029946 Fourth Appellate District,
Division Two

PEOPLE v. CHAUDHRY
Petition for review denied

S110165

B149984 Second Appellate District,
Division Eight

PEOPLE v. MOORE
Petition for review denied

S110171

F037723 Fifth Appellate District

PEOPLE v. HAHN
Petition for review denied

S110176

B155430 Second Appellate District,
Division Three

PEOPLE v. ALVAREZ
Petition for review denied

S110179

H024899 Sixth Appellate District

JEFFERSON (ARCHIE LEE) ON H.C.
Petition for review denied

S110180

B151112 Second Appellate District,
Division Four

PEOPLE v. WOODZ
Petition for review denied

S110197

F041178 Fifth Appellate District

SCOGGINS v. S.C. (PEOPLE)
Petition for review denied

Baxter, J., was recused and did not participate.

S110200

F038229 Fifth Appellate District

PEOPLE v. STOUT
Petition for review denied

Kennard, J., is of the opinion the petition
should be granted.

S110204
C036420 Third Appellate District

PEOPLE v. PERRY
Petition for review denied

S110205
H023583 Sixth Appellate District

C. (JOSHUA), IN RE
Petition for review denied

S110211
B152002 Second Appellate District,
Division One

V. (LEON) IN RE
Petition for review denied

S110213
C040409 Third Appellate District

N. (PARADISE), IN RE
Petition for review denied

S110218
E032352 Fourth Appellate District,
Division Two

TORRES v. S.C.(PEOPLE)
Petition for review denied

S110220
D039171 Fourth Appellate District,
Division One

L. (REBECCA), IN RE
Petition for review denied

S110221
B154155 Second Appellate District,
Division Seven

PEOPLE v. VILLANUEVA
Petition for review denied

S110222
E030343 Fourth Appellate District,
Division Two

PEOPLE v. AGUAYO
Petition for review denied

S110226
B155542 Second Appellate District,
Division One

PEOPLE v. FOWLER
Petition for review denied

S110229
B151727 Second Appellate District,
Division Eight

WIESMAN v. PLUTSKY et al.
Petition for review denied

Baxter, J., and Brown, J., are of the opinion
the petition should be granted.

S110230 C037482 Third Appellate District	PEOPLE v. TODD Petition for review denied
S110231 A099306 Fourth Appellate District, Division One	STIGLICH v. W.C.A.B. (CONTRA COSTA) Petition for review denied
S110233 C037653 Third Appellate District	PEOPLE v. FIGUERAS Petition for review denied
S110235 C040038 Third Appellate District	N. (SAVANNAH), IN RE Petition for review denied
S110239 F036530 Fifth Appellate District	PEOPLE v. DOAN Petition for review denied
S110248 F039529 Fifth Appellate District	B. (JOSHUA), IN RE Petition for review denied
S110255 B155452 Second Appellate District, Division Five	PEOPLE v. MCINTYRE Petition for review denied
S110256 B153263 Second Appellate District, Division Six	PEOPLE v. JOHNSON Petition for review denied
S110298 B152160 Second Appellate District, Division Five	PEOPLE` v. GRAJEDA Petition for review denied
S110302 B152879 Second Appellate District, Division Three	PEOPLE v. BULLER Petition for review denied
S110310 B150655 Second Appellate District, Division Eight	PEOPLE v. TRIANA Petition for review denied

S110326

D039494 Fourth Appellate District,
Division One

D.(J.) IN RE

Petition for review denied

S110331

B161281 Second Appellate District,
Division Eight

JOHNSON v. S.C. (PEOPLE)

Petition for review and application for stay denied

S110333

C038046 Third Appellate District

M. (MATHIAS), IN RE

Petition for review denied

S110752

B153382 Second Appellate District,
Division Two

FINE v. S.C. (DEFLORES)

Petition for review and application for stay denied

S110986

A100406 First Appellate District,
Division Five

ALEXANDER v. S.C. (PEOPLE)

Petition for review and application for stay denied

S106527

B147853 Second Appellate District,
Division Four

SOUTHWEST HOSPITAL DEVELOPMENT
GROUP INC. v. CA. DEPT. OF HEALTH SVCS.
Publication request denied (case closed)

S106622

F037453 Fifth Appellate District

WILLIAMS v. CITY OF BAKERSFIELD

Publication request denied (case closed)

Baxter, J., was recused and did not participate.

S106699

F033985 Fifth Appellate District

STARRET v. STATE OF CALIFORNIA et al.

Publication request denied (case closed)

Baxter, J., was recused and did not participate.

S106995

A094058 First Appellate District,
Division One

BARKER v. FLEETWOOD ENTERPRISES

Publication request denied (case closed)

S107078

B077509 Second Appellate District,
Division Five

MAIN LINE PICTURES v. BASINGER et al.

Publication request denied (case closed)

S107168

F036017 Fifth Appellate District

JEFFERSON v. COUNTY OF KERN

Publication request denied (case closed)

S040471

PEOPLE v. POLLOCK (MILTON RAY)

Extension of time granted

to December 4, 2002 to file appellant's opening brief. Extension is granted based upon counsel Michael B. MacPartland's representation that he anticipates filing that brief by 12/4/2002. After that date, no further extension will be granted.

S042278

PEOPLE v. SAMUELS (MARY ELLEN)

Extension of time granted

to November 15, 2002 to file appellant's opening brief. Extension is granted based upon counsel Joel Levine's representation that he anticipates filing that brief by November 15, 2002. After that date, no further extension will be granted.

S055130

PEOPLE v. MORGAN (EDWARD P.)

Extension of time granted

to January 3, 2003 to file appellant's opening brief.

S072946

PEOPLE v. GONZALEZ (JOSE)

Extension of time granted

to December 31, 2002 to file appellant's opening brief. The court anticipates that after that date, only five further extensions totaling 300 additional days will be granted. Counsel is ordered to inform his or her assisting attorney or entity, if any, and any assisting attorney or entity of any separate counsel of record, of this schedule, and to take all steps necessary to meet it.

S099231**BOLDEN (CLIFFORD) ON H.C.**
Extension of time granted

to November 27, 2002 to file the reply to the informal response to the petition for writ of habeas corpus. After that date, only one further extension totaling 30 additional days will be granted. Extension is granted based upon counsel Jeanne Keevan-Lynch's representation that she anticipates filing that document by December 27, 2002.

S106273B143771 Second Appellate District,
Division Seven**PEOPLE v. SEEL**
Extension of time granted

On application of appellant and good cause appearing, it is ordered that the time to serve and file the opening brief on the merits is extended to and including November 14, 2002.

No further extensions of time are contemplated.

S107126**COUNTY OF RIVERSIDE v. S.C.**
(RIVERSIDE SHERIFF'S ASSN.)
Extension of time granted

On application of real party in interest and good cause appearing, it is ordered that the time to serve and file the answer brief on the merits is extended to and including November 25, 2002.

S107792E029463 Fourth Appellate District,
Division Two**EASTBURN etc. et al. v. REGIONAL FIRE**
PROTECTION AUTHORITY et al.
Extension of time granted

On application of respondent and good cause appearing, it is ordered that the time to serve and file the answer brief on the merits is extended to and including December 13, 2002. No further extensions of time are contemplated.

S007779**PEOPLE v. RODRIGUES (JOSE ARNALDO)**
Counsel appointment order filed

Good cause appearing, the amended application of appointed lead counsel for permission to withdraw as attorney of record for condemned prisoner Jose Arnaldo Rodrigues, filed October 18, 2002, is granted.

The order appointing the California Appellate Project as lead counsel of record for condemned prisoner Jose Arnaldo Rodrigues, filed April 1, 1998, is hereby vacated.

John R. Grele is hereby appointed lead counsel of record for condemned prisoner Jose Arnaldo Rodrigues. Counsel is appointed for purposes of all postconviction proceedings in this court, and for subsequent proceedings, including the preparation and filing of a petition for clemency with the Governor of California, as appropriate.

The Habeas Corpus Resource Center shall remain as appointed associate counsel of record for condemned prisoner Jose Arnaldo Rodrigues.

S013187**PEOPLE v. KRAFT (RANDY STEVEN)**
Order filed

The request of appellant to review and copy the materials contained in the court's records, including any materials designated as confidential or under seal in this case (No. S013187) and in the related cases of *In re Kraft* on Habeas Corpus (Nos. S014772, S014799, S015614, S016342, S017126, S018447, S068447 and S094682), is granted. Appellant will supply the personnel and equipment necessary to undertake this review and copying of the records, which shall occur on the premises of this court.

The records in case Nos. S000733, S005600, S006552, S006673, S039406 and S041286 are not on file with the court, having been returned to the Court of Appeal after disposition by this court.

S042659PEOPLE v. COOK (JOSEPH)
Order filed

Appellant's "Request for Reversal of Certain Rulings of the Trial Court Pertaining to Record Correction," filed on September 5, 2002, is granted in part and denied in part, as follows: With respect to the request to unseal the reporter's transcript of certain oral proceedings at an in camera hearing conducted on March 23, 1994, the request is granted. The clerk is directed to unseal the original of the reporter's transcript of the oral proceedings at the March 23, 1994, in camera hearing, and to provide appellant and respondent each with a copy.

In all other respects, the request is denied.

S103633A093589 First Appellate District,
Division FivePEOPLE v. MELONEY
Order filed

1. Defendant's motion for relief from default, filed by this court on October 17, 2002, is denied.
2. Defendant's "Opening Brief," submitted for filing and received by this court on October 17, 2002 (hereafter October 17 submission), is ordered not to be filed, but retained in the case file.
3. Counsel for defendant is ordered to serve and file, within 30 days of this order, a substitute opening brief that complies with California Rules of Court, rule 14(a)(1)(C). Specifically, any assertion in the brief concerning whether the Santa Clara Superior Court exercised its discretion to decline to lift the stay of the "on-bail" enhancement at issue in this case, or "refused" to lift that stay (see October 17 submission at pp. 2, 7 & 8), and any assertion that the Marin Superior Court "stated [that it] was inclined to" lift the stay (see October 17 submission at p. 8), must be supported by specific record citations. In this regard counsel for defendant, simultaneously with the filing of the substitute brief, is ordered to make an appropriate motion for judicial notice of the relevant Santa Clara

Superior Court proceedings.

4. The parties are directed to include in their briefs a discussion concerning whether a trial court has discretion to decline to lift a stay of an "on-bail" enhancement, and the effect, if any, of Penal Code, section 1170.1, former subdivision (h), repealed effective January 1, 1998. (See Stats. 1997, ch. 750, § 9 (Sen. Bill 721).)

5. Upon solicitation by this court, the First District Court of Appeal Appellate Project is accorded amicus curiae status and is invited to submit a brief on behalf of defendant. Such a brief may be served and filed within 30 days after the filing of defendant's opening brief.